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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act-)	
Competitive Bidding)	

Comments of Infocore, Inc.
on
FURTHER NOTICE OF PROPOSED RULE MAKING
Released: June 23, 1995
Comment Date: July 7, 1995

TABLE OF CONTENTS

- I. Introduction
- II. Proposed Rule Changes
- III. Conclusion

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I. Introduction

Infocore is pleased to comment on the Commissions Further Notice of Proposed Rule Making for the C Block auctions. It is necessary to change the C Block eligibility rules in response to the recent U.S. Supreme Court decision in *Adarand Constructors, Inc. v. Peña* (*Adarand*) in order to avoid future legal uncertainties and avoid further delay of the auction proceedings.

The standard set by the Supreme Court requires any federal program that makes distinctions based on race to show a "compelling governmental interest" for taking race into account and to consider "race-neutral alternatives". These programs must be "narrowly tailored" to meet these governmental interests. Without the proposed changes to the C Block rules, it is unlikely that the auction guidelines would meet the strict scrutiny standards mandated by the Court. Therefore, it is appropriate to remove all race- and gender-based provisions contained in the bidding rules for the entrepreneurial C Block proceedings and use standards solely based on economic size. This guards against additional delays and preserves the Commission's obligation to provide opportunities for designated entities to participate in the provision of broadband services.

II. Proposed Rule Changes

The Commission has concluded that the following rule changes should be implemented in order to eliminate all race- and gender-based provisions contained in the current bidding rules for the C Block auction.

1. The 50.1 / 49.9 percent " control group " equity structure should be extended to all entrepreneurs' block applicants.
2. The exception to the affiliation rules that excludes the gross revenues and total assets of affiliates controlled by minority investors, who are members of an applicants control group, should be eliminated.
3. (6) year ,interest only financing arrangements should be extended to all qualifying small businesses.
4. The maximum (25) percent bidding credit should be granted to all qualifying small businesses only.
5. The (40) percent cellular attribution threshold should only be applicable to ownership interests held by small businesses and rural telephone companies, or to ownership interests held by investors in applicants/licenseses that are small businesses.

These rule changes conform to the requirement to remove all race- and gender-based provisions in the bidding rules. We support the adoption of economic sizing criteria only as a means of structuring the C Block eligibility provisions. Adarand held that the strict scrutiny standard of review applied to preferences based on race, not size. The proposed rule changes are the only uniformly, fair method to accommodate the Supreme Court decision and give deserved consideration to the smaller firms in the auction (Small business credit of 25% and interest only financing).

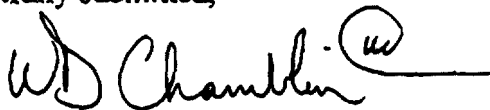
Moreover, these rules have enhanced the ability of all entrepreneurs to gain investor capital from a single entity . The Commission has shown reasonable consideration by making the "49.9% equity rule" available to all participants in the auction rather than eliminate the provision and risk disruption of existing business arrangements.

We understand that the (40) percent cellular attribution threshold provision for minorities and women is categorized as a gender/race preference and must be eliminated from the proposed rules to avoid legal challenge. We support the preservation of these attribution considerations for small businesses and rural telephone companies, which is consistent with economic sizing criteria used to shape the revised C Block bidding rules.

III. Conclusion

Infocore respectfully agrees with the changes proposed in the Further Notice of Proposed Rule Making. We support the use of provisions based on economic size only to fairly accommodate the interests of entrepreneur's block participants and satisfy the Adarand decision. These changes protect against legal consequences which would certainly further delay the auction proceedings. It is essential that the C Block auction commence as soon as possible to allow designated entities to acquire licenses and expeditiously provide services to the marketplace.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.D. Chamblin III", with a stylized flourish at the end.

William D. Chamblin III
Vice President
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